

IN THE
SUPREME COURT
OF THE
UNITED STATES.

This was an action of ejectment, brought by defendant in error, against plaintiffs in error, in the Circuit Court of the United States for the Northern District of Illinois, for the recovery of that part of claims numbered forty-five (45) and sixty-nine (69), and part of claims sixty-two (62) and sixty-three, (63) in the village of Peoria, in the State of Illinois, as confirmed by an act of Congress approved March 3d, A. D. 1823, entitled an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

Declaration served July 9th, A. D. 1855, and filed in Court July 10th, A. D. 1855. Plea of general issue filed July 18th, A. D. 1855. Judgment in favor of defendant in error on the third day of August, A. D. 1857.

Bill of exceptions filed August 18th, A. D. 1857, which, after giving a history of the trial, concludes as follows :

“ To all of which decisions and rulings of the Court, “ defendant then and there excepted, and prays that this his “ bill of exceptions be sealed, signed and made of record, which “ is done.”

The plaintiff below proved title in himself under the said act of Congress of the 3d of March, A. D. 1823.

The defendants below claimed title under a patent dated 24th day of January, A. D. 1838, granting the southwest quarter of section nine (9), eight north of eight east of the fourth p. meridian, which includes the land in dispute, to Charles Ballance, subject, however, to the rights of any and all persons claiming under the act of Congress of 3d March, A. D. 1823, entitled “ an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois ; ” — and offered evidence tending to show that he had occupied the same from A. D. 1832, to the commencement of this suit.

I.

It does not appear that the rulings of the Court, in refusing and giving instructions were excepted to before the jury retired from the bar of the Court.

The exceptions are vague and nugatory.

15 Curtis 537, 179 ; 9 Curtis 3 ; 13 Curtis 127 ;
 4 Scam. 557, 419 . 11 Illinois R. 73, 586 ;
 12 Illinois R. 74, 87, 379 ;
 13 Illinois R. 85, 341, 330, 370, 633, 699 ;
 14 Illinois R. 58 ; 1 Scam. 165, 252 ; 3 Scam. 61 ;
 2 Gilm. 725, 285 ; 3 Gilm. 366 ; 5 Gilm. 209.

III.

The defendants below held possession of the land subject to the rights of the plaintiff; consequently his possession was subservient, and not adverse to the title of the plaintiff.

Ballance vs. Tyson, 12 Illinois R. 332 ;
13 Howard 24 ; 19 Howard 338 ; 16 Curtis 120, 142 ;
Til. Adams 46, 463, note ; 16 Curtis 52 ;
15 Illinois R. 273, 233 ; Marsh 167, 170 ; 3 John. 180 ;
10 John. 440 ; 20 John. 306 ; 3 Wend. 337 ;
15 Mass. 492 ; 9 Mass. 508 ; 1 Pick. 327 ;
2 Wend. 557, 368 ; 4 Dess. 474 ; 5 Cowen 130, 134 ;
2 Wend. 166 ; 5 Harris & John. 226.

WILLIAMS, *Atty. for Defendant.*

